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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,409	03/21/2006	Michal Kalavsky	ZTP03P01030	2678

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EXAMINER

FREAY, CHARLES GRANT

ART UNIT	PAPER NUMBER
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3746

MAIL DATE	DELIVERY MODE
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04/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/565,409	Applicant(s) KALAVSKY ET AL.	
	Examiner Charles G. Freay	Art Unit 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-40 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 20-40 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/2006, 3/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim sets forth that the shaft rotates. The specification clearly sets forth that the shaft is fixed and cannot rotate (see page 4 line 38).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20-22, 34, 35, 39 and 40 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kozdon (USPN 3,572,982).

Kozdon discloses a pump having a pump chamber formed by a front housing shell and a pot shaped shield 8, 7. The commutated (see abstract) motor has a rotor within the pump chamber which has a pump impeller 3 attached to the front of it.

With regards to claims 39 and 40 the pump is “suitable” for use with an appliance. Furthermore, with regards to claim 40, the Kozdon pump discloses all structural elements set forth in the body of the claim and the dishwasher set forth in the preamble is considered to be an intended use. The pump could be considered a dishwasher if the output from the pump were pointed at a dirty plate.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 23, 24 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kozdon in view of Ushikoshi (USPN 4,762,461).

As set forth above Kozdon discloses the invention substantially as claimed but does not disclose the rotor and impeller rotating on a fixed shaft mounted to the shield and there being an axial bearing. Ushikoshi et al discloses a similar leakless pump having a pump chamber holding an integral pump impeller and a rotor having magnets thereon which is rotatable on a fixed shaft 6 and having radial 8a, 8b and axial 7 bearings. At the time of the invention it would have been obvious to one of ordinary skill in the art to substitute a fixed shaft support arrangement such as Ushikoshi for the rotating shaft arrangement of Kozdon in order to allow for the use of larger and more durable support bearings.

Claims 25-27, 29, 30, 32, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kozdon in view of Ushikoshi as applied to claim 23 above and further in view of French reference 2 608 228 (hereafter FR '228).

As set forth above Kozdon in view of Ushikoshi disclose the invention substantially as claimed but do not disclose o-ring seals between the shaft and rotor and the bearing elements. FR '228 discloses in Fig. 6 a similar pump having radial bearings 35 with sealing O-rings 39, 40, 41 between it the shaft and the rotor. At the

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time of the invention it would have been obvious to one of ordinary skill in the art to provide seals and bearings as substitute for Kozon in view of Ushikoshi bearings in order to fixedly secure the rotatably secure the rotor to the shaft while sealing the inside of the rotor so that liquid does not gather and stagnate there.

Claims 31 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kozdon in view of Ushikoshi and FR '228 as applied to claims 29 and 30 above, and further in view of Chi-Wei (USPN 5,184,945).

Kozdon in view of Ushikoshi and FR '228 disclose the invention substantially as claimed but do not disclose a shock absorbing member. Chi-Wei in Figs. 5 and 6 disclose a shock-absorbing member which is used in an impeller pump having an impeller and rotor located within a pump chamber, see Fig. 1. At the time of the invention it would have been obvious to one of ordinary skill in the art to utilize a shock absorbing element as taught by Chi-Wei in order to account for axial thrust on the impeller while securing it in place.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kozdon in view of Bowes et al (USPN 5,708,313).

As set forth above Kozdon discloses the invention substantially as claimed but does not disclose the rotor being encased in plastic. Bowes et al disclose a similar impeller and rotor assembly having a rotor encased in plastic (see col. 4 lns, 22-28). At the time of the invention it would have been obvious to one of ordinary skill in the art to

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encase the Kozdon rotor in plastic as taught by Bowes et al in order to protect the magnets and create a more durable system.

Claims 10-22, 33-35, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pezzillo (USPN 3,288,073) in view of Kozdon.

Pezzillo discloses a pump having a pump chamber formed by a front housing shell 15 and a pot shaped shield 45. The motor has a rotor within the pump chamber which has a pump impeller 21,22 attached to the front of it and the rotor has conically tapering inner surfaces (see Fig. 1) Pezzillo does not disclose that the motor is commutated. Kozdon discloses a similar pump having a commutated motor. At the time of the invention it would have been obvious to one of ordinary skill in the art to utilize a provide commutate the current fed to the motor in order to provide the correct driving phases.

With regards to claims 39 and 40 the pump is "suitable" for use with an appliance. Furthermore, with regards to claim 40, the Pezzillo and Kozdon pumps discloses all structural elements set forth in the body of the claim and the dishwasher set forth in the preamble is considered to be an intended use. The pump could be considered a dishwasher if the output from the pump were pointed at a dirty plate.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-

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4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles G Freay/
Primary Examiner
Art Unit 3746

CGF
April 9, 2009